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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/904,666      | 07/12/2001  | Edward Anthony Bezek | CFLAY.00046         | 6182             |

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| EXAMINER |
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NORDMEYER, PATRICIA L

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1772

DATE MAILED: 07/01/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/904,666

Applicant(s)

BEZEK ET AL.

Examiner

Patricia L. Nordmeyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 14.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 – 3 and 5 – 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slat (USPN 6,214,281) in view of Jones et al. (USPN 6,063,414).

Slat discloses a container for food products (Column 1, lines 18 – 19) formed with a liner, the inner most layer, made from a material chosen from ethyl vinyl alcohol, PET or PEN (Column 4, lines 32 – 35 and Figures 1 and 7, #10), which is contact with the product (Figure 1, #10 and Figure 3, #30). The liner has a thickness between 0.01 and 0.30 mils (Column 4, lines 25 – 26). Ridges are formed at the opening of the container in order to attach a lid to seal the container (Figures 9 and 10). However, Slat fails to disclose the dry food product acting as a desiccant to draw moisture away from the ethylene vinyl alcohol layer and the dry food product comprising a water activity of less than 0.6 or 0.4 upon the sealing step.

Jones et al. teaches dry pet food with a water activity 0.7 or less (Column 11, lines 16 – 17) that acts as a desiccant since water binds to the soluble fiber material (Column 5, lines 3 – 6) in a polymer (Column 11, lines 7 – 9) container of gas impermeable materials (Column 5, lines 1

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– 2) for the purpose of packaging food that does not require preservatives or removal of oxygen to attain an increased shelf life, freshness and palatability of the dry food product.

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided a dry food product with a water activity 0.7 or less to act as a desiccant in a container in Slat in order to package food that does not require preservatives or removal of oxygen to attain an increased shelf life, freshness and palatability of the dry food product as taught by Jones et al.

### ***Response to Arguments***

3. Applicant's arguments filed in Paper #13 regarding the U.S.C. 103 rejection of claims 1 – 3 and 5 – 10 over Slat in view of Jones et al. have been fully considered but they are not persuasive.

In response to Applicant's argument that Slat refers to only the neck portion being formed of a liner made from ethylene vinyl alcohol, Slat teaches the liner, and not just the neck portion being made of ethylene vinyl alcohol (Column 4, lines 33 – 36 and Figures 1 and 7, #10). The liner is the innermost layer of the bottle and is covering the entire inside surface of the container.

In response to Applicant's argument that Jones et al. fails to disclose the pet food acting as a desiccant, Jones et al. teaches a pet food as a desiccant, where the definition of a desiccant is

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a drying agent. A drying agent absorbs a variety of liquids, including water. The fact that the soluble fiber of pet food binds water makes the pet food a drying agent because the water is being absorbed by the food and not being left inside the interior of the container. Although Jones et al. teach the food being used to lower the spoilage of the food, it is at the same time acting as a desiccant for the container as shown by the absorption of the water by the fiber and by the water activity of the food itself.

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969). In this case, both containers of Jones et al. and Slat are made to hold a food product, when the specific food of Jones et al. was placed in the container of Slat the food would absorb moisture as it does in Jones et al.

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***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (703) 306-5480. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Patricia L. Nordmeyer  
Examiner  
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*pln*  
pln  
June 27, 2003

*[Signature]*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
*1772*

*6/27/03*